

Introduced by Senator Pan

February 25, 2015

An act to amend Section 1370 of the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

SB 453, as amended, Pan. Prisons: involuntary medication.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for the voluntary and involuntary administration of antipsychotic medication.

Under existing law, if consent for antipsychotic medication is withdrawn or if the treating psychiatrist later determines that antipsychotic medication is medically necessary and appropriate, the treating psychiatrist is required to make efforts to obtain consent for that medication. Existing law provides that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate for the defendant, antipsychotic medication may be administered to the defendant for a maximum of 21 days, provided, however, that, within 72 hours of the certification, the defendant is

provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment.

~~This bill would instead authorize a psychiatrist designated by the facility medical director to make the determination and certification as to whether antipsychotic medication is medically necessary and appropriate and to administer that medication to the defendant for up to 21 days.~~ *authorize the treating psychiatrist, if he or she determines that there is a need, based on factors such as preserving rapport with the patient, to request that the facility medical director designate another psychiatrist to act in the place of the treating psychiatrist for purposes of involuntary medication. If the medical director of the facility designates another psychiatrist to act, this bill would require the treating psychiatrist to brief the acting psychiatrist of the relevant facts of the case.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:
3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged or hearing on the alleged violation shall proceed,
6 and judgment may be pronounced.
7 (B) If the defendant is found mentally incompetent, the trial,
8 the hearing on the alleged violation, or the judgment shall be
9 suspended until the person becomes mentally competent.
10 (i) In the meantime, the court shall order that the mentally
11 incompetent defendant be delivered by the sheriff to a state hospital
12 for the care and treatment of the mentally disordered, as directed
13 by the State Department of State Hospitals, or to any other available
14 public or private treatment facility, including a local county jail
15 treatment facility or the community-based residential treatment
16 system established pursuant to Article 1 (commencing with Section
17 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
18 Institutions Code if the facility has a secured perimeter or a locked
19 and controlled treatment facility, approved by the community
20 program director that will promote the defendant's speedy

1 restoration to mental competence, or placed on outpatient status
2 as specified in Section 1600.

3 (ii) However, if the action against the defendant who has been
4 found mentally incompetent is on a complaint charging a felony
5 offense specified in Section 290, the prosecutor shall determine
6 whether the defendant previously has been found mentally
7 incompetent to stand trial pursuant to this chapter on a charge of
8 a Section 290 offense, or whether the defendant is currently the
9 subject of a pending Section 1368 proceeding arising out of a
10 charge of a Section 290 offense. If either determination is made,
11 the prosecutor shall so notify the court and defendant in writing.
12 After this notification, and opportunity for hearing, the court shall
13 order that the defendant be delivered by the sheriff to a state
14 hospital, as directed by the State Department of State Hospitals,
15 or other secure treatment facility for the care and treatment of the
16 mentally disordered unless the court makes specific findings on
17 the record that an alternative placement would provide more
18 appropriate treatment for the defendant and would not pose a
19 danger to the health and safety of others.

20 (iii) If the action against the defendant who has been found
21 mentally incompetent is on a complaint charging a felony offense
22 specified in Section 290 and the defendant has been denied bail
23 pursuant to subdivision (b) of Section 12 of Article I of the
24 California Constitution because the court has found, based upon
25 clear and convincing evidence, a substantial likelihood that the
26 person's release would result in great bodily harm to others, the
27 court shall order that the defendant be delivered by the sheriff to
28 a state hospital for the care and treatment of the mentally
29 disordered, as directed by the State Department of State Hospitals,
30 unless the court makes specific findings on the record that an
31 alternative placement would provide more appropriate treatment
32 for the defendant and would not pose a danger to the health and
33 safety of others.

34 (iv) The clerk of the court shall notify the Department of Justice
35 in writing of a finding of mental incompetence with respect to a
36 defendant who is subject to clause (ii) or (iii) for inclusion in his
37 or her state summary criminal history information.

38 (C) Upon the filing of a certificate of restoration to competence,
39 the court shall order that the defendant be returned to court in

1 accordance with Section 1372. The court shall transmit a copy of
2 its order to the community program director or a designee.

3 (D) A defendant charged with a violent felony may not be
4 delivered to a state hospital or treatment facility pursuant to this
5 subdivision unless the state hospital or treatment facility has a
6 secured perimeter or a locked and controlled treatment facility,
7 and the judge determines that the public safety will be protected.

8 (E) For purposes of this paragraph, “violent felony” means an
9 offense specified in subdivision (c) of Section 667.5.

10 (F) A defendant charged with a violent felony may be placed
11 on outpatient status, as specified in Section 1600, only if the court
12 finds that the placement will not pose a danger to the health or
13 safety of others. If the court places a defendant charged with a
14 violent felony on outpatient status, as specified in Section 1600,
15 the court shall serve copies of the placement order on defense
16 counsel, the sheriff in the county where the defendant will be
17 placed, and the district attorney for the county in which the violent
18 felony charges are pending against the defendant.

19 (2) Prior to making the order directing that the defendant be
20 committed to the State Department of State Hospitals or other
21 treatment facility or placed on outpatient status, the court shall
22 proceed as follows:

23 (A) The court shall order the community program director or a
24 designee to evaluate the defendant and to submit to the court within
25 15 judicial days of the order a written recommendation as to
26 whether the defendant should be required to undergo outpatient
27 treatment, or be committed to the State Department of State
28 Hospitals or to any other treatment facility. A person shall not be
29 admitted to a state hospital or other treatment facility or placed on
30 outpatient status under this section without having been evaluated
31 by the community program director or a designee. The community
32 program director or designee shall evaluate the appropriate
33 placement for the defendant between the State Department of State
34 Hospitals, a local county jail treatment facility, or the
35 community-based residential treatment system based upon
36 guidelines provided by the State Department of State Hospitals.
37 If a local county jail treatment facility is selected, the State
38 Department of State Hospitals shall provide treatment at the county
39 jail treatment facility and reimburse the county jail treatment
40 facility for the reasonable costs of the bed during the treatment. If

1 the community-based residential treatment system is selected, the
2 State Department of State Hospitals shall provide reimbursement
3 to the community-based residential treatment system for the cost
4 of treatment as negotiated with the State Department of State
5 Hospitals. The six-month limitation in Section 1369.1 shall not
6 apply to individuals deemed incompetent to stand trial who are
7 being treated to restore competency within a county jail treatment
8 facility pursuant to this section.

9 (B) The court shall hear and determine whether the defendant
10 lacks capacity to make decisions regarding the administration of
11 antipsychotic medication. The court shall consider opinions in the
12 reports prepared pursuant to subdivision (a) of Section 1369, as
13 applicable to the issue of whether the defendant lacks capacity to
14 make decisions regarding the administration of antipsychotic
15 medication, and shall proceed as follows:

16 (i) The court shall hear and determine whether any of the
17 following is true:

18 (I) The defendant lacks capacity to make decisions regarding
19 antipsychotic medication, the defendant's mental disorder requires
20 medical treatment with antipsychotic medication, and, if the
21 defendant's mental disorder is not treated with antipsychotic
22 medication, it is probable that serious harm to the physical or
23 mental health of the patient will result. Probability of serious harm
24 to the physical or mental health of the defendant requires evidence
25 that the defendant is presently suffering adverse effects to his or
26 her physical or mental health, or the defendant has previously
27 suffered these effects as a result of a mental disorder and his or
28 her condition is substantially deteriorating. The fact that a
29 defendant has a diagnosis of a mental disorder does not alone
30 establish probability of serious harm to the physical or mental
31 health of the defendant.

32 (II) The defendant is a danger to others, in that the defendant
33 has inflicted, attempted to inflict, or made a serious threat of
34 inflicting substantial physical harm on another while in custody,
35 or the defendant had inflicted, attempted to inflict, or made a
36 serious threat of inflicting substantial physical harm on another
37 that resulted in his or her being taken into custody, and the
38 defendant presents, as a result of mental disorder or mental defect,
39 a demonstrated danger of inflicting substantial physical harm on
40 others. Demonstrated danger may be based on an assessment of

1 the defendant's present mental condition, including a consideration
2 of past behavior of the defendant within six years prior to the time
3 the defendant last attempted to inflict, inflicted, or threatened to
4 inflict substantial physical harm on another, and other relevant
5 evidence.

6 (III) The people have charged the defendant with a serious crime
7 against the person or property, involuntary administration of
8 antipsychotic medication is substantially likely to render the
9 defendant competent to stand trial, the medication is unlikely to
10 have side effects that interfere with the defendant's ability to
11 understand the nature of the criminal proceedings or to assist
12 counsel in the conduct of a defense in a reasonable manner, less
13 intrusive treatments are unlikely to have substantially the same
14 results, and antipsychotic medication is in the patient's best medical
15 interest in light of his or her medical condition.

16 (ii) If the court finds any of the conditions described in clause
17 (i) to be true, the court shall issue an order authorizing involuntary
18 administration of antipsychotic medication to the defendant when
19 and as prescribed by the defendant's treating psychiatrist at any
20 facility housing the defendant for purposes of this chapter. The
21 order shall be valid for no more than one year, pursuant to
22 subparagraph (A) of paragraph (7). The court shall not order
23 involuntary administration of psychotropic medication under
24 subclause (III) of clause (i) unless the court has first found that the
25 defendant does not meet the criteria for involuntary administration
26 of psychotropic medication under subclause (I) of clause (i) and
27 does not meet the criteria under subclause (II) of clause (i).

28 (iii) In all cases, the treating hospital, facility, or program may
29 administer medically appropriate antipsychotic medication
30 prescribed by a psychiatrist in an emergency as described in
31 subdivision (m) of Section 5008 of the Welfare and Institutions
32 Code.

33 (iv) If the court has determined that the defendant has the
34 capacity to make decisions regarding antipsychotic medication,
35 and if the defendant, with advice of his or her counsel, consents,
36 the court order of commitment shall include confirmation that
37 antipsychotic medication may be given to the defendant as
38 prescribed by a treating psychiatrist pursuant to the defendant's
39 consent. The commitment order shall also indicate that, if the
40 defendant withdraws consent for antipsychotic medication, after

the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication and if the defendant, with advice from his or her counsel, does not consent, the court order for commitment shall indicate that, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(vi) A report made pursuant to paragraph (1) of subdivision (b) shall include a description of antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the patients' rights advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (iv) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (v) of subparagraph (B), and ~~a the treating psychiatrist designated by the facility's medical director~~ determines that antipsychotic medication has become medically necessary and appropriate, the *treating* psychiatrist ~~designated by the facility's medical director~~ shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the *treating* psychiatrist ~~designated by the facility's medical director~~ is of the opinion that the defendant lacks

1 capacity to make decisions regarding antipsychotic medication
2 based on the conditions described in subclause (I) or (II) of clause
3 (i) of subparagraph (B), the *treating* psychiatrist ~~designated by the~~
4 ~~facility's medical director~~ shall certify whether the lack of capacity
5 and any applicable conditions described above exist. That
6 certification shall contain an assessment of the current mental
7 status of the defendant and the opinion of the *treating* psychiatrist
8 ~~designated by the facility's medical director~~ that involuntary
9 antipsychotic medication has become medically necessary and
10 appropriate.

11 (D) (i) If the *treating* psychiatrist ~~designated by the facility's~~
12 ~~medical director~~ certifies that antipsychotic medication has become
13 medically necessary and appropriate pursuant to subparagraph (C),
14 antipsychotic medication may be administered to the defendant
15 for not more than 21 days, provided, however, that, within 72 hours
16 of the certification, the defendant is provided a medication review
17 hearing before an administrative law judge to be conducted at the
18 facility where the defendant is receiving treatment. The *treating*
19 psychiatrist ~~designated by the facility's medical director~~ shall
20 present the case for the certification for involuntary treatment and
21 the defendant shall be represented by an attorney or a patients'
22 rights advocate. The attorney or patients' rights advocate shall be
23 appointed to meet with the defendant no later than one day prior
24 to the medication review hearing to review the defendant's rights
25 at the medication review hearing, discuss the process, answer
26 questions or concerns regarding involuntary medication or the
27 hearing, assist the defendant in preparing for the hearing and
28 advocating for his or her interests at the hearing, review the panel's
29 final determination following the hearing, advise the defendant of
30 his or her right to judicial review of the panel's decision, and
31 provide the defendant with referral information for legal advice
32 on the subject. The defendant shall also have the following rights
33 with respect to the medication review hearing:

34 (I) To be given timely access to the defendant's records.

35 (II) To be present at the hearing, unless the defendant waives
36 that right.

37 (III) To present evidence at the hearing.

38 (IV) To question persons presenting evidence supporting
39 involuntary medication.

1 (V) To make reasonable requests for attendance of witnesses
2 on the defendant's behalf.

3 (VI) To a hearing conducted in an impartial and informal
4 manner.

5 (ii) If the administrative law judge determines that the defendant
6 either meets the criteria specified in subclause (I) of clause (i) of
7 subparagraph (B), or meets the criteria specified in subclause (II)
8 of clause (i) of subparagraph (B), then antipsychotic medication
9 may continue to be administered to the defendant for the 21-day
10 certification period. Concurrently with the treating psychiatrist's
11 certification, the treating psychiatrist shall file a copy of the
12 certification and a petition with the court for issuance of an order
13 to administer antipsychotic medication beyond the 21-day
14 certification period. For purposes of this subparagraph, the treating
15 psychiatrist shall not be required to pay or deposit any fee for the
16 filing of the petition or other document or paper related to the
17 petition.

18 (iii) If the administrative law judge disagrees with the
19 certification, medication may not be administered involuntarily
20 until the court determines that antipsychotic medication should be
21 administered pursuant to this section.

22 (iv) The court shall provide notice to the prosecuting attorney
23 and to the attorney representing the defendant, and shall hold a
24 hearing, no later than 18 days from the date of the certification, to
25 determine whether antipsychotic medication should be ordered
26 beyond the certification period.

27 (v) If, as a result of the hearing, the court determines that
28 antipsychotic medication should be administered beyond the
29 certification period, the court shall issue an order authorizing the
30 administration of that medication.

31 (vi) The court shall render its decision on the petition and issue
32 its order no later than three calendar days after the hearing and, in
33 any event, no later than the expiration of the 21-day certification
34 period.

35 (vii) If the administrative law judge upholds the certification
36 pursuant to clause (ii), the court may, for a period not to exceed
37 14 days, extend the certification and continue the hearing pursuant
38 to stipulation between the parties or upon a finding of good cause.
39 In determining good cause, the court may review the petition filed
40 with the court, the administrative law judge's order, and any

1 additional testimony needed by the court to determine if it is
2 appropriate to continue medication beyond the 21-day certification
3 and for a period of up to 14 days.

4 (viii) The district attorney, county counsel, or representative of
5 a facility where a defendant found incompetent to stand trial is
6 committed may petition the court for an order to administer
7 involuntary medication pursuant to the criteria set forth in
8 subclauses (II) and (III) of clause (i) of subparagraph (B). The
9 order is reviewable as provided in paragraph (7).

10 (3) When the court orders that the defendant be committed to
11 the State Department of State Hospitals or other public or private
12 treatment facility, the court shall provide copies of the following
13 documents prior to the admission of the defendant to the State
14 Department of State Hospitals or other treatment facility where
15 the defendant is to be committed:

16 (A) The commitment order, including a specification of the
17 charges.

18 (B) A computation or statement setting forth the maximum term
19 of commitment in accordance with subdivision (c).

20 (C) A computation or statement setting forth the amount of
21 credit for time served, if any, to be deducted from the maximum
22 term of commitment.

23 (D) State summary criminal history information.

24 (E) Arrest reports prepared by the police department or other
25 law enforcement agency.

26 (F) Court-ordered psychiatric examination or evaluation reports.

27 (G) The community program director's placement
28 recommendation report.

29 (H) Records of a finding of mental incompetence pursuant to
30 this chapter arising out of a complaint charging a felony offense
31 specified in Section 290 or a pending Section 1368 proceeding
32 arising out of a charge of a Section 290 offense.

33 (I) Medical records.

34 (4) When the defendant is committed to a treatment facility
35 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
36 court makes the findings specified in clause (ii) or (iii) of
37 subparagraph (B) of paragraph (1) to assign the defendant to a
38 treatment facility other than a state hospital or other secure
39 treatment facility, the court shall order that notice be given to the
40 appropriate law enforcement agency or agencies having local

1 jurisdiction at the site of the placement facility of any finding of
2 mental incompetence pursuant to this chapter arising out of a
3 charge of a Section 290 offense.

4 (5) When directing that the defendant be confined in a state
5 hospital pursuant to this subdivision, the court shall commit the
6 patient to the State Department of State Hospitals.

7 (6) (A) If the defendant is committed or transferred to the State
8 Department of State Hospitals pursuant to this section, the court
9 may, upon receiving the written recommendation of the medical
10 director of the state hospital and the community program director
11 that the defendant be transferred to a public or private treatment
12 facility approved by the community program director, order the
13 defendant transferred to that facility. If the defendant is committed
14 or transferred to a public or private treatment facility approved by
15 the community program director, the court may, upon receiving
16 the written recommendation of the community program director,
17 transfer the defendant to the State Department of State Hospitals
18 or to another public or private treatment facility approved by the
19 community program director. In the event of dismissal of the
20 criminal charges before the defendant recovers competence, the
21 person shall be subject to the applicable provisions of the
22 Lanterman-Petris-Short Act (Part 1 (commencing with Section
23 5000) of Division 5 of the Welfare and Institutions Code). If either
24 the defendant or the prosecutor chooses to contest either kind of
25 order of transfer, a petition may be filed in the court for a hearing,
26 which shall be held if the court determines that sufficient grounds
27 exist. At the hearing, the prosecuting attorney or the defendant
28 may present evidence bearing on the order of transfer. The court
29 shall use the same standards as are used in conducting probation
30 revocation hearings pursuant to Section 1203.2.

31 Prior to making an order for transfer under this section, the court
32 shall notify the defendant, the attorney of record for the defendant,
33 the prosecuting attorney, and the community program director or
34 a designee.

35 (B) If the defendant is initially committed to the State
36 Department of State Hospitals or secure treatment facility pursuant
37 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
38 subsequently transferred to any other facility, copies of the
39 documents specified in paragraph (3) shall be taken with the
40 defendant to each subsequent facility to which the defendant is

1 transferred. The transferring facility shall also notify the appropriate
2 law enforcement agency or agencies having local jurisdiction at
3 the site of the new facility that the defendant is a person subject
4 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

5 (7) (A) An order by the court authorizing involuntary
6 medication of the defendant shall be valid for no more than one
7 year. The court shall review the order at the time of the review of
8 the initial report and the six-month progress reports pursuant to
9 paragraph (1) of subdivision (b) to determine if the grounds for
10 the authorization remain. In the review, the court shall consider
11 the reports of the treating psychiatrist or psychiatrists and the
12 defendant's patients' rights advocate or attorney. The court may
13 require testimony from the *treating* psychiatrist—~~or~~
14 ~~psychiatrists designated by the facility's medical director~~ and the
15 patients' rights advocate or attorney, if necessary. The court may
16 continue the order authorizing involuntary medication for up to
17 another six months, or vacate the order, or make any other
18 appropriate order.

19 (B) Within 60 days before the expiration of the one-year
20 involuntary medication order, the district attorney, county counsel,
21 or representative of any facility where a defendant found
22 incompetent to stand trial is committed may petition the committing
23 court for a renewal, subject to the same conditions and
24 requirements as in subparagraph (A). The petition shall include
25 the basis for involuntary medication set forth in clause (i) of
26 subparagraph (B) of paragraph (2). Notice of the petition shall be
27 provided to the defendant, the defendant's attorney, and the district
28 attorney. The court shall hear and determine whether the defendant
29 continues to meet the criteria set forth in clause (i) of subparagraph
30 (B) of paragraph (2). The hearing on any petition to renew an order
31 for involuntary medication shall be conducted prior to the
32 expiration of the current order.

33 (8) *If the treating psychiatrist determines that there is a need,*
34 *based on preserving his or her rapport with the patient, to prevent*
35 *harm, or other factors, the treating psychiatrist may request that*
36 *the facility medical director designate another psychiatrist to act*
37 *in the place of the treating psychiatrist for purposes of this*
38 *subdivision. If the medical director of the facility designates*
39 *another psychiatrist to act pursuant to this paragraph, the treating*

1 *psychiatrist shall brief the acting psychiatrist of the relevant facts*
2 *of the case.*

3 (b) (1) Within 90 days of a commitment made pursuant to
4 subdivision (a), the medical director of the state hospital or other
5 treatment facility to which the defendant is confined shall make a
6 written report to the court and the community program director
7 for the county or region of commitment, or a designee, concerning
8 the defendant's progress toward recovery of mental competence
9 and whether the administration of antipsychotic medication remains
10 necessary. If the defendant is on outpatient status, the outpatient
11 treatment staff shall make a written report to the community
12 program director concerning the defendant's progress toward
13 recovery of mental competence. Within 90 days of placement on
14 outpatient status, the community program director shall report to
15 the court on this matter. If the defendant has not recovered mental
16 competence, but the report discloses a substantial likelihood that
17 the defendant will regain mental competence in the foreseeable
18 future, the defendant shall remain in the state hospital or other
19 treatment facility or on outpatient status. Thereafter, at six-month
20 intervals or until the defendant becomes mentally competent, if
21 the defendant is confined in a treatment facility, the medical
22 director of the hospital or person in charge of the facility shall
23 report in writing to the court and the community program director
24 or a designee regarding the defendant's progress toward recovery
25 of mental competence and whether the administration of
26 antipsychotic medication remains necessary. If the defendant is
27 on outpatient status, after the initial 90-day report, the outpatient
28 treatment staff shall report to the community program director on
29 the defendant's progress toward recovery, and the community
30 program director shall report to the court on this matter at
31 six-month intervals. A copy of these reports shall be provided to
32 the prosecutor and defense counsel by the court.

33 (A) If the report indicates that there is no substantial likelihood
34 that the defendant will regain mental competence in the foreseeable
35 future, the committing court shall order the defendant to be returned
36 to the court for proceedings pursuant to paragraph (2) of
37 subdivision (c) no later than 10 days following receipt of the report.
38 The court shall transmit a copy of its order to the community
39 program director or a designee.

(B) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the medical director of the state hospital or other treatment facility to which the defendant is confined shall do both of the following:

(i) Promptly notify and provide a copy of the report to the defense counsel and the district attorney.

(ii) Provide a separate notification, in compliance with applicable privacy laws, to the committing county's sheriff that transportation will be needed for the patient.

(2) If the court has issued an order authorizing the treating facility to involuntarily administer antipsychotic medication to the defendant, the reports made pursuant to paragraph (1) concerning the defendant's progress toward regaining competency shall also consider the issue of involuntary medication. Each report shall include, but is not limited to, all the following:

(A) Whether or not the defendant has the capacity to make decisions concerning antipsychotic medication.

(B) If the defendant lacks capacity to make decisions concerning antipsychotic medication, whether the defendant risks serious harm to his or her physical or mental health if not treated with antipsychotic medication.

(C) Whether or not the defendant presents a danger to others if he or she is not treated with antipsychotic medication.

(D) Whether the defendant has a mental illness for which medications are the only effective treatment.

(E) Whether there are any side effects from the medication currently being experienced by the defendant that would interfere with the defendant's ability to collaborate with counsel.

(F) Whether there are any effective alternatives to medication.

(G) How quickly the medication is likely to bring the defendant to competency.

(H) Whether the treatment plan includes methods other than medication to restore the defendant to competency.

(I) A statement, if applicable, that no medication is likely to restore the defendant to competency.

(3) After reviewing the reports, the court shall determine whether or not grounds for the order authorizing involuntary administration of antipsychotic medication still exist and shall do one of the following:

1 (A) If the original grounds for involuntary medication still exist,
2 the order authorizing the treating facility to involuntarily administer
3 antipsychotic medication to the defendant shall remain in effect.

4 (B) If the original grounds for involuntary medication no longer
5 exist, and there is no other basis for involuntary administration of
6 antipsychotic medication, the order for the involuntary
7 administration of antipsychotic medication shall be vacated.

8 (C) If the original grounds for involuntary medication no longer
9 exist, and the report states that there is another basis for involuntary
10 administration of antipsychotic medication, the court shall set a
11 hearing within 21 days to determine whether the order for the
12 involuntary administration of antipsychotic medication shall be
13 vacated or whether a new order for the involuntary administration
14 of antipsychotic medication shall be issued. The hearing shall
15 proceed as set forth in subparagraph (B) of paragraph (2) of
16 subdivision (a).

17 (4) A defendant who has been committed or has been on
18 outpatient status for 18 months and is still hospitalized or on
19 outpatient status shall be returned to the committing court where
20 a hearing shall be held pursuant to the procedures set forth in
21 Section 1369. The court shall transmit a copy of its order to the
22 community program director or a designee.

23 (5) If it is determined by the court that no treatment for the
24 defendant's mental impairment is being conducted, the defendant
25 shall be returned to the committing court. The court shall transmit
26 a copy of its order to the community program director or a
27 designee.

28 (6) At each review by the court specified in this subdivision,
29 the court shall determine if the security level of housing and
30 treatment is appropriate and may make an order in accordance
31 with its determination. If the court determines that the defendant
32 shall continue to be treated in the state hospital or on an outpatient
33 basis, the court shall determine issues concerning administration
34 of antipsychotic medication, as set forth in subparagraph (B) of
35 paragraph (2) of subdivision (a).

36 (c) (1) At the end of three years from the date of commitment
37 or a period of commitment equal to the maximum term of
38 imprisonment provided by law for the most serious offense charged
39 in the information, indictment, or misdemeanor complaint, or the
40 maximum term of imprisonment provided by law for a violation

1 of probation or mandatory supervision, whichever is shorter, but
2 no later than 90 days prior to the expiration of the defendant's term
3 of commitment, a defendant who has not recovered mental
4 competence shall be returned to the committing court. The court
5 shall notify the community program director or a designee of the
6 return and of any resulting court orders.

7 (2) Whenever a defendant is returned to the court pursuant to
8 paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
9 subdivision and it appears to the court that the defendant is gravely
10 disabled, as defined in subparagraph (B) of paragraph (1) of
11 subdivision (h) of Section 5008 of the Welfare and Institutions
12 Code, the court shall order the conservatorship investigator of the
13 county of commitment of the defendant to initiate conservatorship
14 proceedings for the defendant pursuant to Chapter 3 (commencing
15 with Section 5350) of Part 1 of Division 5 of the Welfare and
16 Institutions Code. Hearings required in the conservatorship
17 proceedings shall be held in the superior court in the county that
18 ordered the commitment. The court shall transmit a copy of the
19 order directing initiation of conservatorship proceedings to the
20 community program director or a designee, the sheriff and the
21 district attorney of the county in which criminal charges are
22 pending, and the defendant's counsel of record. The court shall
23 notify the community program director or a designee, the sheriff
24 and district attorney of the county in which criminal charges are
25 pending, and the defendant's counsel of record of the outcome of
26 the conservatorship proceedings.

27 (3) If a change in placement is proposed for a defendant who
28 is committed pursuant to subparagraph (B) of paragraph (1) of
29 subdivision (h) of Section 5008 of the Welfare and Institutions
30 Code, the court shall provide notice and an opportunity to be heard
31 with respect to the proposed placement of the defendant to the
32 sheriff and the district attorney of the county in which the criminal
33 charges or revocation proceedings are pending.

34 (4) If the defendant is confined in a treatment facility, a copy
35 of any report to the committing court regarding the defendant's
36 progress toward recovery of mental competence shall be provided
37 by the committing court to the prosecutor and to the defense
38 counsel.

39 (d) With the exception of proceedings alleging a violation of
40 mandatory supervision, the criminal action remains subject to

1 dismissal pursuant to Section 1385. If the criminal action is
2 dismissed, the court shall transmit a copy of the order of dismissal
3 to the community program director or a designee. In a proceeding
4 alleging a violation of mandatory supervision, if the person is not
5 placed under a conservatorship as described in paragraph (2) of
6 subdivision (c), or if a conservatorship is terminated, the court
7 shall reinstate mandatory supervision and may modify the terms
8 and conditions of supervision to include appropriate mental health
9 treatment or refer the matter to a local mental health court, reentry
10 court, or other collaborative justice court available for improving
11 the mental health of the defendant.

12 (e) If the criminal action against the defendant is dismissed, the
13 defendant shall be released from commitment ordered under this
14 section, but without prejudice to the initiation of any proceedings
15 that may be appropriate under the Lanterman-Petris-Short Act
16 (Part 1 (commencing with Section 5000) of Division 5 of the
17 Welfare and Institutions Code).

18 (f) As used in this chapter, “community program director” means
19 the person, agency, or entity designated by the State Department
20 of State Hospitals pursuant to Section 1605 of this code and Section
21 4360 of the Welfare and Institutions Code.

22 (g) For the purpose of this section, “secure treatment facility”
23 shall not include, except for state mental hospitals, state
24 developmental centers, and correctional treatment facilities, any
25 facility licensed pursuant to Chapter 2 (commencing with Section
26 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
27 3.2 (commencing with Section 1569) of, Division 2 of the Health
28 and Safety Code, or any community board and care facility.

29 (h) Nothing in this section shall preclude a defendant from filing
30 a petition for habeas corpus to challenge the continuing validity
31 of an order authorizing a treatment facility or outpatient program
32 to involuntarily administer antipsychotic medication to a person
33 being treated as incompetent to stand trial.